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the United States, provided that the exports from the U.S. occurred prior to the applicable contract sanctity date.

(ii) The U.S. content of foreign-produced commodities is 20% or less by value; or

(iii) The commodities are medical items.

NOTE TO PARAGRAPH (b) OF THIS SECTION:

Applicants who wish any of the factors described in paragraph (b)(4) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the specifications and medical use of the equipment, or the date of export from the United States.

(4) License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Sudan, including its military logistics capability, or could enhance Sudan's ability to support acts of international terrorism, the appropriate committees of the Congress will be notified 30 days before issuance of a license to export or reexport such items.

(c) *Contract sanctity.* Contract sanctity dates and related licensing information for Sudan are set forth in Supplement No. 2 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient documentation to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these controls are maintained only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 63 FR 42228, Aug. 7, 1998; 64 FR 27142, May 18, 1999; 64 FR 47667, Sept. 1, 1999; 65 FR 14859, Mar. 20, 2000; 65 FR 34075, May 26, 2000; 66 FR 36682, July 12, 2001]

§ 742.11 Specially designed implements of torture.

(a) *License requirements.* In support of U.S. foreign policy to promote the observance of human rights throughout the world, a license is required to export specially designed implements of torture controlled by 0A983 to all destinations, including Canada.

(b) *Licensing policy.* Applications for such licenses will generally be denied to all destinations.

(c) *Contract sanctity.* The contract sanctity date is November 9, 1995. Contract sanctity will be a factor in considering only applications for export to the NATO countries, Japan, Australia, and New Zealand.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining controls on implements of torture, at this time these controls are maintained only by the United States.

§ 742.12 High performance computers.

(a) *License and recordkeeping requirements.* (1) This section contains special provisions for exports, reexports, and certain intra-country transfers of high performance computers, including software, and technology. This section affects the following ECCNs: 4A001; 4A002; 4A003; 4D001; 4D002; and 4E001. Licenses are required under this section for ECCN's having an "XP" under "Reason for Control" when License Exception CTP is not available (see § 740.7 of the EAR). License requirements reflected in this section are based on particular destinations, end-users, or end-uses. For the calculation of CTP, see the Technical Note that follows the Advisory Notes for Category 4 in the Commerce Control List. Note that License Exception CTP contains restrictions on access by nationals of certain countries, and on reexports and transfers of computers.

(2) In recognition of the strategic and proliferation significance of high performance computers, a license is required for the export or reexport of high performance computers to destinations, end-users, and end-uses, as specified in this section and on the CCL. These license requirements supplement requirements that apply for other control reasons, such as nuclear nonproliferation provided in section 742.3 of the EAR. The license requirements described in this section 742.12 are not reflected on the Country Chart (Supplement No. 1 to part 738 of the EAR). Three Computer Country Tiers have been established for the purposes of these controls. Countries included in

Computer Tiers 1 and 3 are listed in License Exception CTP in section 740.7 of the EAR. As of January 19, 2001 there is no longer a Computer Tier 2, and countries that were in Tier 2 are incorporated into Computer Tier 1. Computer Tier 4 consists of Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) Exporters must keep accurate records of each export to countries not included in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR) of a computer with a CTP greater than 6,500 MTOPS. These records must be submitted semiannually to BXA and must contain the information as described in § 743.1 of the EAR.

(b) *Licensing policy.* Licensing policies described in this section vary according to the country of destination, and the end-use or end-user involved in the transaction. Note that in addition, license applications for items covered by § 742.12 will also be reviewed under the nuclear nonproliferation licensing policy in § 742.3(b). In certain cases, licenses may be subject to safeguard conditions. The specific conditions that may be imposed by BXA will depend on the country of destination, and the end-use or end-user of the export. BXA may also require end-use certification which, in appropriate cases, is certified by the government of the importing country. The range of possible safeguard conditions and related information are provided in Supplement No. 3 to part 742.

(1) *Computer Tier 1—(i) License requirement.* No license is required under this § 742.12 for exports or reexports of computers to and among countries listed in Computer Tier 1, for consumption in such countries or other disposition in accordance with the EAR.

(ii) *Licensing policy.* A license is not required under this § 742.12.

(2) [Reserved]

(3) *Computer Tier 3. (i) License requirement.* (A) A license is required to export or reexport computers to countries in Computer Tier 3 to nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, § 744.5, and § 744.12 of the EAR in Computer Tier 3 countries.

(B) A license is required to export or reexport computers with a CTP greater than 85,000 MTOPS to a country in Computer Tier 3.

(C) Prior to February 26, 2001, a license may be required to export or reexport computers with a CTP greater than 12,500 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(5) of the EAR). Beginning on February 26, 2001 but prior to March 20, 2001, a license may be required to export or reexport computers with a CTP greater than 28,000 MTOPS but less than or equal to 85,000 MTOPS to countries in Computer Tier 3 pursuant to the NDAA.

(ii) *Licensing policy for nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses.* License applications for exports and reexports to nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, § 744.5, and § 744.12 of the EAR in countries in Computer Tier 3 will be reviewed on a case-by-case basis using the following criteria:

(A) The presence and activities of countries and end-users of national security and proliferation concern and the relationships that exist between the government of the importing country and such countries and end-users;

(B) The ultimate consignee's participation in, or support of, any of the following:

(1) Activities that involve national security concerns; or

(2) Nuclear, chemical, biological or missile proliferation activities described in part 744 of the EAR;

(C) The extent to which the importing country is involved in nuclear, chemical, biological, or missile proliferation activities described in part 744 of the EAR;

(D) The end-user, whether the end-use is single-purpose or multiple-purpose.

(iii) *Licensing policy for other end-users and end-uses.* License applications for exports and reexports to other end-uses and end-users located in Computer Tier 3 countries will generally be approved, except there is a presumption of denial

for all applications for exports and re-exports of computers having a CTP greater than 6,500 MTOPS destined to Indian and Pakistani entities determined to be involved in nuclear, missile, or military activities included in Supplement No. 4 to part 744 (Entity List). All license applications for exports and reexports to India and Pakistan not meeting these criteria for presumption of denial will be considered on a case-by-case basis under other licensing policies set forth in the EAR applicable to such computers.

(iv) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (b)(3)(iv), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

(A) Exporters must file post-shipment reports for computer exports, as well as exports of items used to enhance previously exported or reexported computers, according to the following schedule:

(1) For exports occurring prior to February 26, 2001, where the CTP is greater than 12,500 MTOPS;

(2) For exports on or after February 26, 2001, but before March 20, 2001 where the CTP is greater than 28,000 MTOPS; and

(3) For exports on or after March 20, 2001 where the CTP is greater than 85,000 MTOPS.

(B) *Information that must be included in each post-shipment report.* No later than the last day of the month following the month in which the export takes place, the exporter must submit the following information to BXA at the address listed in paragraph (b)(3)(iv)(C) of this section:

(1) Exporter name, address, and telephone number;

(2) License number;

(3) Date of export;

(4) End-user name, point of contact, address, telephone number;

(5) Carrier;

(6) Air waybill or bill of lading number;

(7) Commodity description, quantities—listed by model numbers, serial numbers, and CTP level in MTOPS; and

(8) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(C) *Mailing address.* A copy of the post-shipment report[s] required under paragraph (b)(3)(iv)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service: U.S. Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, D.C. 20044, Attn: Office of Enforcement Analysis HPC Team, Room 4065.

(2) For courier deliveries: U.S. Department of Commerce, Office of Enforcement Analysis HPC Team, 14th Street and Constitution Ave., NW, Room 4065, Washington, DC 20230.

(4) *Computer Tier 4—(i) License requirement.* A license is required to export or reexport any items covered by this section to a country in Country Tier 4.

(ii) *Licensing policy.* The licensing policies for countries in Computer Tier 4 are the same as described in the following EAR sections: for Sudan see § 742.10(b); for Syria see § 742.9(b); for Cuba see § 746.2; for Iran see § 746.7; for Iraq see § 746.3; for Libya see § 746.4; and for North Korea see § 742.19(b).

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of high performance computers.

(d) *High performance computer regime.* The United States and Japan participate in a high performance computer regime. The regime provides uniform and effective safeguards to protect high performance computers from unauthorized destinations, end-users and end-uses.

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